

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MELANIE DAVIS,

Plaintiff,

vs.

IHOP PROPERTY LLC,

Defendant.

8:18-CV-572

ORDER

This matter is before the Court on the parties' joint motion to set aside entry of default ([filing 12](#)). The motion is granted.

The procedural history of this case is not complex. The plaintiff filed its complaint ([filing 1](#)) on December 10, 2018. Service of process was effectuated on March 28, 2019. [Filing 7-1](#). The defendant's answer was due on April 18, *see Fed. R. Civ. P. 12(a)(1)*, but no answer was filed. On June 4, the plaintiff moved for entry of default, and the clerk's entry of default was entered the next day. [Filing 9](#); [filing 10](#). Notice of the clerk's entry of default was mailed to the defendant June 5, and on June 12 counsel appeared for the defaulted defendant. [Filing 11](#). The present motion to set aside the entry of default was filed the next day. [Filing 12](#).

[Fed. R. Civ. P. 55\(c\)](#) provides that the Court "may set aside an entry of default for good cause. . . ." When examining whether good cause exists, the Court weighs whether the conduct of the defaulting party was blameworthy or culpable, whether the defaulting party has a meritorious defense, and whether the other party would be prejudiced if the default were excused. [Stephenson v. El-Batrawi](#), 524 F.3d 907, 912 (8th Cir. 2008). And although the same factors are typically relevant in deciding whether to set aside entries of default and default judgments, relief from a default judgment requires a stronger showing

of excuse than relief from a mere default order. *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 783 (8th Cir. 1998).

Here, the defendant's explanation for default is that there was a miscommunication between the defendant franchisor and the franchisee on the property at issue. *Filing 12 at 1*. While this does not exonerate them, it is understood that relief from a default may be available even when the failure to comply with the filing deadline is attributable to negligence. *Ceridian Corp. v. SCSC Corp.*, 212 F.3d 398, 403 (8th Cir. 2000). And the Eighth Circuit draws a distinction between contumacious or intentional delay or disregard for deadlines and procedural rules, and a "marginal failure" to meet pleading or other deadlines. *Johnson*, 140 F.3d at 784.

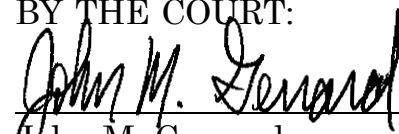
In this case, the evidence shows a good faith default "caused by poor communication." *See id.* The plaintiff's support for the motion means that there is no basis for concluding that the plaintiff has been prejudiced in a "concrete way," *see Stephenson*, 524 F.3d at 915, given that "prejudice may not be found from delay along or from the fact that the defaulting party will be permitted to defend on the merits." *Johnson*, 140 F.3d at 785. Therefore,

IT IS ORDERED:

1. The motion to set aside entry of default (*filing 12*) is granted.
2. The Clerk's Entry of Default (*filing 10*) is set aside.

Dated this 21st day of June, 2019.

BY THE COURT:



John M. Gerrard
Chief United States District Judge